



**King County**

# **Whistleblower Protection Program**

## **King County Ombudsman's Office**

Whistleblower Protection Program Annual Report  
January 1 to December 31, 2015

March 31, 2016

### **Background**

The Ombudsman's Office is the primary recipient of whistleblower complaints from King County employees (KCC 3.42). We focus on helping employees determine whether their concerns can be resolved informally, or whether an investigation resulting in formal findings and recommendations is warranted. We follow up to ensure appropriate departmental responses. We also lead problem solving efforts in appropriate cases, to resolve complaints fairly.

### **Whistleblowers & the Public Trust**

The Whistleblower Protection Code encourages employees with knowledge of major wrongdoing to report it, so that problems may be identified and corrected, and county government may operate more efficiently. The Code provides a roadmap to employees for reporting improper practices, as well as strong protections for employee whistleblowers and witnesses. King County's strong whistleblower protections demonstrate its commitment to support an ethical and productive workplace. These efforts align with the Countywide Strategic Plan's key goals, including Service Excellence, Financial Stewardship, and a Quality Workforce.

Our 2015 Whistleblower Protection Program Annual Report shows that our office coded 27 cases opened during 2015 in regard to whistleblower matters. This is fewer than the 37 coded whistleblower cases in 2014. We attribute much of the difference to our increasing responsiveness to employee concerns at the front end of our intake process. By providing greater individualized help to employees who reach out to our office with workplace issues, more cases are resolved through informal resolution, channeled early into other formal processes, or are determined upfront to be excluded by law from our office's whistleblower jurisdiction. Cases are not coded with the whistleblower designation if an employee decides to pursue a resolution of a workplace matter through means other than a whistleblower complaint with the Ombudsman's Office during the early intake process. This can result in a more efficient use of county resources when fewer agencies are involved at the outset, or when employees and managers resolve issues using avenues that are less costly than investigation or litigation.

The 2015 results, shown in detail on page two (2) of this report, are also consistent with financial expectations as King County's budget continues to stabilize following cuts including layoffs in the years since the Great Recession. As King County government continues adjusting to the need to provide vital services more efficiently, we expect that employee whistleblower protections will continue to be important for building and maintaining employee confidence, and public trust in county government.

## 2014 Whistleblower Cases by Department

The table below lists whistleblower and whistleblower retaliation cases processed by the Ombudsman's Office in 2015. Departments not listed in the table had no Ombudsman whistleblower cases during 2015.

Department	Carried Forward into 2015	Cases Opened in 2015	Cases Closed in 2015	Carried Forward into 2016
Adult & Juvenile Detention	0	5	5	0
Auditor	0	0	1 <sup>1</sup>	0
Community & Human Services	0	1	0	1
County Council	0	0	1	0
Executive Services	2	4	2	2
Information Technology	0	1	1	0
Natural Resources & Parks	0	1	0	1
Ombudsman <sup>2</sup>	1	3	4	0
Public Health	1	3	4	0
Transportation	5	4	7	2
Sheriff's Office	1	2	2	1
Non-Jurisdictional	0	3	3	0
<b>Total</b>	<b>10</b>	<b>27</b>	<b>30</b>	<b>7</b>

King County employees also may opt to file whistleblower complaints directly with their departments. Since 2010, departments report the results of those cases to the Ombudsman. During 2014, we began to standardize reporting methodologies among departments, and provided a guidance document toward that end. For 2015, only the Department of Adult and Juvenile Detention reported receipt of whistleblower complaints that had not been processed by the Ombudsman's Office. The first of the two complaints DAJD reported alleged that a sergeant wrote a memo that contained false or misleading information; the available evidence initially led supervisors to issue a letter of corrective counseling to the complainant, who later submitted additional evidence that led to a pending disciplinary process against the sergeant. The second complaint involved an employee who alleged retaliation after she reported what she believed to be a fraudulent billing practice; an internal investigation revealed that the billing practice was not fraudulent but was improper, and the alleged retaliator was terminated.

## 2015 Whistleblower Inquiries and Complaints by Type

<sup>1</sup> This case involved assistance the Ombudsman's Office provided to the Auditor's Office regarding a previous whistleblower complaint concerning the same subject matter as a pending audit about work order construction contracts. There were no whistleblower complaints filed against the Auditor's Office.

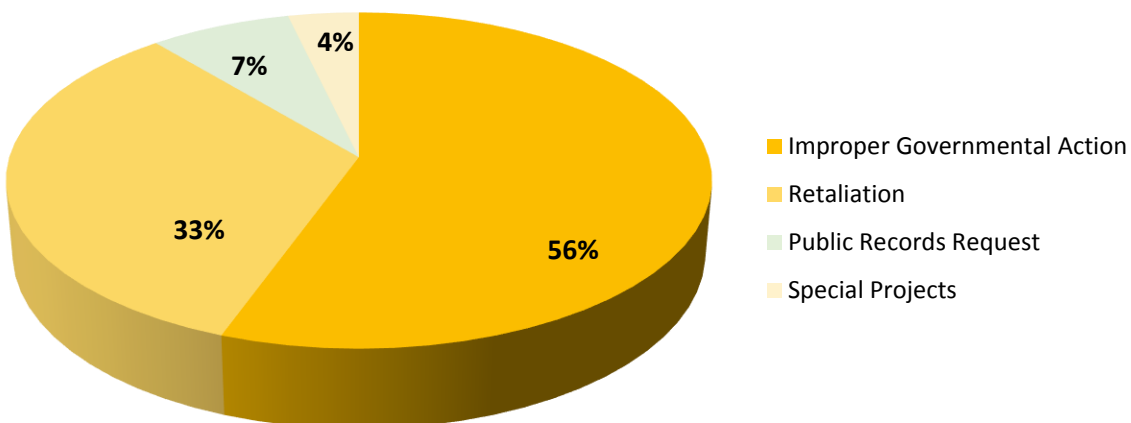
<sup>2</sup> These cases involved public records requests of complainant's case files, Ombudsman managerial reviews of the office's casework at the request of complainants, or further administrative action such as appeals of Ombudsman findings to the Washington State Office of Administrative Hearings as provided by KCC 3.42.060(J).

The whistleblower code encourages county employees to report what they believe to be illegal or serious wrongdoing, called “***improper governmental action***”. This generally means:

- illegal conduct;
- abuse of authority;
- gross mismanagement;
- substantial and specific danger to public health or safety;
- gross waste of funds; or,
- silencing scientific or technical findings.

***Retaliation*** against an employee who is, or is perceived to be, a whistleblower is prohibited. The whistleblower code defines retaliation as any unwarranted, negative change in employment status, terms or conditions, and includes threats or attempts, as well as behaving in a hostile manner toward an employee, encouraging others to do so, or not preventing others from doing so.

**Whistleblower Contacts by Type for 2015**

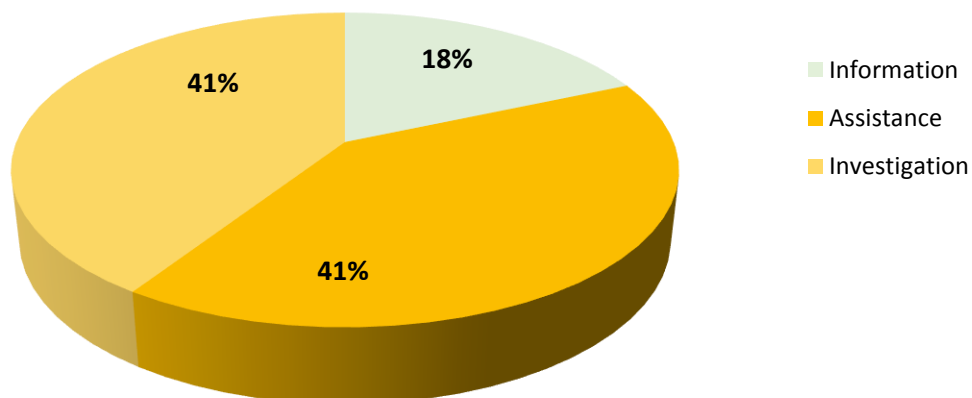


## Action on Complaints

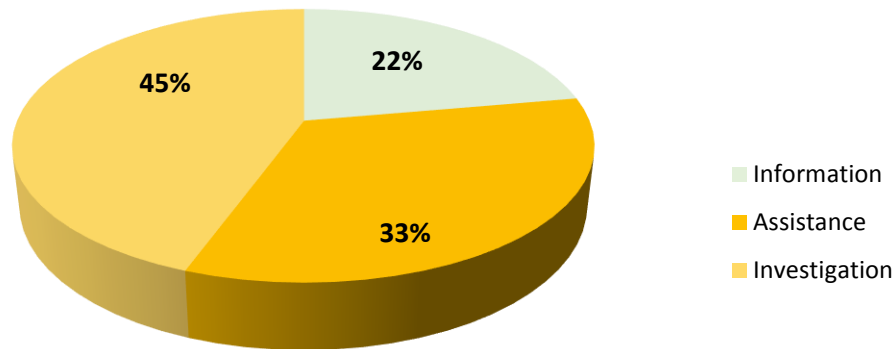
In 2015, the Ombudsman's Office received a total of 34 contacts concerning whistleblower and retaliation matters, in addition to cases carried forward and closed in 2016. These contacts resulted in one of three classifications:

- Information: Requests for information or advice which may result in referral.
- Assistance: Issues resolved through staff-level inquiry, facilitation, counseling or coaching.
- Investigation: Complaints that are not resolvable through assistance and are thoroughly investigated. Investigations involve independent evidence collection and analysis, including relevant records, witness testimony, laws, policies, and procedures. The Ombudsman makes formal findings, may develop recommendations, and follows up to ensure appropriate departmental responses.

### Resolution of Improper Governmental Action Complaints for 2015



### Resolution of Retaliation Complaints for 2015



Ombudsman's Office staff worked with the Office of Alternative Dispute Resolution in 2013, to design a **mediation** protocol for whistleblower cases. Under the protocol, Ombudsman's Office staff may participate actively in confidential mediation sessions, and the Ombudsman must approve or disapprove settlement agreements between whistleblower complainants and county departments. This ensures that settlement terms satisfy the public interest, in addition to institutional and personal interests. Mediated settlements approved by the Ombudsman may be closed without further investigation.

### Summarized Details of Select 2015 Cases

The nature and circumstances of whistleblower complaints varies widely. These selected case summaries offer a sample of the range of allegations and resolutions.

- An employee alleged improper workers compensation process and procedure within the Department of Executive Services. Ombudsman staff obtained documentation from the applicable department and interviewed appropriate employees. We found no evidence that policy or processes were not followed or that they were misapplied. We discussed our findings with the complainant and made referrals regarding non-jurisdictional issues.
- Employee alleged retaliatory termination by the Department of Transportation. An employee had previously made protected reports of alleged health and safety violations. The employee then filed a retaliation complaint, which was resolved through mediation. After some time, the employee believed that the department had not fulfilled its obligations under the mediation agreement, and the employee filed a second retaliation complaint. Ombudsman staff conducted a thorough investigation, including review of documentation provided by the employee and the department, as well as interviews of the employee, respondents, and other witnesses. The evidence did not support the employee's allegations of retaliation. Ombudsman's Office issued written findings to all parties.

- An employee alleged whistleblower retaliation within the Sheriff's Office. The employee had filed various whistleblower and retaliation complaints with the Ombudsman's Office previously, and sought review of this matter in the state Office of Administrative Hearings in lieu of completion of the Ombudsman's investigation. The complaint was ultimately resolved through a confidential negotiated settlement between the now former employee and King County.
  
- An employee alleged improper governmental action within the Information Technology Department. The employee alleged that management changed certain terms and conditions of employment in ways that constituted changes in working conditions that had not been bargained-for, and therefore in violation of a labor agreement between the employee's union and King County. The employee also alleged hostile treatment by management, and that human resources personnel did not respond effectively. Ombudsman staff explained that violations of labor agreements fall outside the jurisdiction of the Whistleblower Protection Code, counseled the employee about remaining potential options, and referred the employee to appropriate union and dispute resolution services.
  
- An employee anonymously alleged improper governmental action within the Department of Public Health. The employee was concerned that a supervisor invited the work group to 90-minute long lunches for employee birthdays when lunch was only authorized for a half hour, and the employee got in trouble once when he went to lunch with one other co-worker. Ombudsman staff explored the history of the issue and underlying workplace dynamics. We explained that events for employee morale generally did not violate the whistleblower or ethics codes, especially if condoned by management. Having discussed the employee's concerns about long-standing tensions with his supervisor, Ombudsman staff referred him to appropriate dispute resolution services, and offered to be of assistance again if needed.

## **Ombudsman Resource Issues**

The 2009 whistleblower code amendments vests jurisdiction with the Ombudsman's Office to receive and investigate whistleblower retaliation cases. This authority has allowed our office to develop a consistent and fair approach in how these cases are addressed county-wide, and has allowed us to track departmental accountability and provide a clear source for information. This benefits both the employees who report these cases, as well as King County agencies and taxpayers. The code amendments also added mediation as an alternative way to resolve these cases where appropriate, which has allowed us to draw on the deep expertise of our staff when utilizing informal problem solving approaches in conjunction with our investigative powers.

While whistleblower cases continue to comprise a small percentage of more than 2,000 inquiries the Ombudsman's Office handles each year, nearly half of the whistleblower cases that came to our office in 2015 were retaliation cases. Adding retaliation cases to the Ombudsman's portfolio has required a shift in resources. Retaliation cases are high stakes for both reporting employees and for the County, and the underlying whistleblower allegations involve matters that may significantly and substantially threaten public health or safety, wise expenditure of taxpayers' dollars, or even the mission of the agencies involved. These cases are also time-intensive, typically requiring a large number of staff hours. We will continue to monitor the impact on the office's workload.

Additionally, continuing a trend commenced in 2012, we experienced a rise in the number of public records requests for case files that dealt with whistleblower and retaliation issues handled by our office. Whistleblower and retaliation cases often have large documentary records, including sensitive documents that must be withheld under state law; responding quickly and fully to these requests takes significant amounts of staff time.

## **Employee Feedback**

King County offers meaningful whistleblower protections that are strong relative to similar laws nationally. The scope of these protections can nevertheless be misunderstood in certain situations, and we work hard to educate complainants and departments about their options for both investigation and informal problem-solving. The Ombudsman's Office continues its commitment to ensure that county employees and managers understand their rights and responsibilities under the whistleblower code, and to resolve these cases fairly and efficiently.

As in previous years, feedback from employees in 2015 indicated that most who contacted the Ombudsman's Office about whistleblower concerns were grateful for our assistance when we explained our jurisdiction, provided informal analysis of their issues, described where whistleblower protection fits within the universe of options available to address their concerns, and counseled and coached in regard to their particular situations.